tiff in the form of checks mailed through the United States [fol. 7] mail to plaintiff's Home Office at Hartford, Connecticut, from the Home Office of the aforesaid reinsured companies in various states of the United States. Likewise, any sums due from plaintiff to said reinsured companies under the terms of the aforesaid reinsurance agreements or treaties were paid by plaintiff by mailing at Hartford, Connecticut, through the United States mail, a check in a letter addressed to the reinsured company entitled thereto.

VII

During the year 1930 plaintiff received by check through the United States mails at Hartford, Connecticut, on account of the aforesaid reinsurance business from the companies it reinsured net considerations amounting to $416,594.03 on account of reinsurance granted to the reinsured companies where the reinsured companies had issued policies or contracts to residents of the State of California.

VIII

Prior to the first Monday in March, 1931, in accordance with the provisions of the Political Code of the State of California and in further accordance with the requirements of the Insurance Commissioner of the said State, and upon [fol. 8] blanks and forms furnished by him, plaintiff did file with said Insurance Commissioner a statement showing the amount of life, accident and health insurance done by it in said State of California during the year ending December 31, 1930, and conducted as aforesaid, and the sum in premiums collected by plaintiff therefor in the State of California, amounting to $375,460.04. Because said blanks so furnished by said Insurance Commissioner required and because said Insurance Commissioner required of the plaintiff, and not otherwise, plaintiff also in said statement set forth and returned fully to said Insurance Commissioner the true amount of all considerations paid to and received on account of its reinsurance business conducted as aforesaid with other insurance companies in regard to policies or contracts of insurance issued by such other insurance companies to residents of the State of California, amounting to the sum of $416,594.03, so that said Insurance Commissioner was in and by said statement fully advised respecting the true character of plaintiff's business for said

year in said State of California and the extent and character of the protest hereinafter referred to.

[fol. 9] IX

Thereafter and on or before the last day of March, 1931, said Insurance Commissioner duly and regularly made and filed with the State Board of Equalization of said State of California a report showing, among other things, the following:

1. The total amount of office or tabular premiums, denominated by said Insurance Commissioner as gross premiums, being the premiums specified to be paid in and by said policies, without any deductions therefrom, receivable by plaintiff for said year commencing January 1, 1930, and ending December 31, 1930, in the course of the said business done by it in said State of California.

2. The total amount of all gross premiums, meaning thereby the total premiums received by plaintiff for the said year from its said business done by it in said State of California.

3. The total amount of all premiums or portions thereof payable and specified to be paid in and by said policies to plaintiff by its said policyholders during the same period of time on its said business done in said State of California and applied to pay renewal premiums thereof as aforesaid.

4. The total amount of all premiums returned or paid by [fol. 10] plaintiff to its said policyholders during the same period of time on its said business done in said State of California.

5. The total amount of all payments made to plaintiff by insurer companies during the same period of time under and in pursuance of said reinsurance agreements or treaties.

X

That when assessing and levying a tax upon the property and franchise of plaintiff in the State of California in accordance with Subdivision (b) of Section 14, Article XIII of the Constitution of California, and Sections 3664-3671 of the Political Code of said state, said State Board of Equalization included as part of the gross premiums received by

plaintiff from its business done in the State of California as referred to in said statute and constitutional provision, the total of all moneys paid to and received by plaintiff on account of its aforesaid reinsurance business; that the amount so received by plaintiff during 1930 on account of this reinsurance business was $416,594.03 where policies were issued by the reinsured companies to residents of California; that on the life and accident and health insurance business which plaintiff in fact did transact in the State of Cali- [fol. 11] fornia during the year 1930 the amount of gross premiums received by plaintiff was $375,460.04; that in levying a commuted tax upon the property and franchise of plaintiff in California said State Board of Equalization wrongfully and unlawfully taxed plaintiff by computing said tax at 2.6% of the sum of $792,054.07 instead of 2.6% of the sum of $375,460.04, as the same should have been computed, and said State Board of Equalization wrongfully and unlawfully refused to exclude from such computation the sum of $416,594.03, constituting the moneys received by plaintiff by United States Mail at its Home Office in Hartford, State of Connecticut, on account of its reinsurance business conducted as hereinbefore set out in detail.

The said State Board of Equalization duly and regularly met in the State Capitol at Sacramento, California, on the first Monday in March, 1931, as required by law, and thereafter there continued in open session from day to day, Sundays and holidays excepted, until the first Monday in July, 1931. Between said first Monday in March and the third Monday before the first Monday in July, 1931, the said State Board of Equalization assessed and levied against the property and franchise (except real estate) of said corporation located in the State of California, a tax computed at the rate [fol. 12] of 2.6% upon the sum of $792,054.07 amounting to the sum of $20,593.40.

XI

Plaintiff alleges that before making its computation for levying and assessing said tax as heretofore set forth, said State Board of Equalization should have, from the total sum reported to said Board by said Insurance Commissioner as plaintiff's gross premiums from its business done in the State of California, deducted the sum of such reinsurance considerations, to-wit, the sum of $416,594.03, received by plaintiff; as hereinbefore set out; that said State Board of

Equalization failed and refused to make said deduction and imposed a tax purported to be upon plaintiff's property and franchise (except real estate) located in the State of California, which tax was computed at the rate of 2.6% thereon, and which tax on such reinsurance considerations amounted to $10,831.44; all of said tax so levied and assessed computed on the basis of the aforesaid reinsurance business was void and illegal and wrongfully assessed under and by virtue of Section 14 of Article XIII of the Constitution of the State of California and is a tax upon the property and business of plaintiff located without the jurisdiction of the State of [fol. 13] California in violation of the fourteenth Amendment of the Constitution of the United States.

XII

The said State Board of Equalization, prior to the said first Monday of July, 1931, prepared a book in one or more volumes called "record of assessment for State Taxes," in which were entered in writing and printing each and every assessment and levy made by said Board including the assessment and levy against plaintiff hereinbefore particularly referred to; and on the first Monday in July, 1931, the Secretary of said Board of Equalization delivered to the State Controller of said State its said record of said assessments for state taxes duly certified to by the Chairman and Secretary of said State Board.

XIII

Thereafter and on or before the seventh day of August, 1931, plaintiff involuntarily and under protest paid to defendant the sum of $5,415.72, representing the tax levied and assessed against plaintiff on the basis of the reinsurance business not conducted in the State of California, which tax was wrongfully levied and assessed against plaintiff, and at the same time plaintiff paid to defendant the sum of $4,880.98, representing the tax levied and assessed against [fol. 14] plaintiff on account of its gross premiums derived from its life and accident and health insurance business which plaintiff did in fact conduct in California, these payments representing one-half of the taxes levied and assessed for the year 1930. Likewise, on or about the 23rd day of January, 1932, plaintiff paid to defendant similar amounts, the payment of $5,415.72 on account of plaintiff's reinsur-

ance business being made involuntarily and under protest. At the time of making each of said payments of taxes as hereinbefore set out in this paragraph, plaintiff, being dissatisfied with the assessment so made against it as aforesaid, filed with said State Controller of the State of California a written protest stating what part of said tax was claimed by it to be void and illegal, to-wit, the sum of $10,831.44, and the grounds upon which said claim was founded. In and by said written protest plaintiff stated and claimed what amounts were improperly included in the gross premiums upon which said State Board of Equalization computed said tax, to-wit, the amount of $416,594.03.

XIV

That in assessing and levying taxes upon the property of plaintiff as authorized by Subdivision (b) of Section 14 of [fol. 15] Article XIII of the Constitution of California, the taxing authorities of said state, to-wit, the State Board of Equalization, have adopted and followed a construction of said Section of said State Constitution, which results in a tax on plaintiff's property and franchise not located in said state and in violation of plaintiff's rights under the Fourteenth Amendment of the Constitution of the United States. Said State Board of Equalization in computing the tax upon said reinsurance considerations levied a tax on account of business not done in the State of California, and on contracts executed wholly and to be performed and in fact performed wholly without the boundaries of the State of California. If said Subdivision (b) of Section 14 of Article XIII of the Constitution of California is construed so as to tax plaintiff on the basis of the reinsurance considerations received as aforesaid, then this provision is invalid and invalid as to plaintiff as being in conflict with and in violation of the Constitution of the United States and particularly the Fourteenth Amendment thereof and that section of the Fourteenth Amendment prohibiting the taking of property without due process of law.

XV

If Subdivision (b) of Section 14, Article XIII of the Constitution of California taxes plaintiff on the basis of its re- [fol. 16] insurance business conducted as aforesaid, then it is invalid as to plaintiff as in conflict with the Fourteenth

Amendment to the Constitution of the United States and particularly that section of the Fourteenth Amendment prohibiting the taking of property without due process of law in that a tax is levied against plaintiff on account of a franchise not granted to plaintiff by the State of California and a privilege not exercised by plaintiff within the State of California, plaintiff being authorized to conduct and conducing in the State of California only the business of life and accident and health insurance in accordance with the certificates of authority from the State of California as hereinbefore referred to.

XVI

In levying the aforementioned tax against plaintiff based on the reinsurance considerations received by plaintiff outside of the State of California, the state denies to plaintiff the equal protection of its laws contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States in that plaintiff is required because of the peculiar type and distribution of its business to pay to defendant for the year 1930 a tax of $20,593.40 for the privilege of doing business in the State of California. This tax [fols. 17-18] as measured by the business which plaintiff in fact did in the State of California during 1930, to-wit, the receipt by plaintiff of net premiums in the amount of $375,460.04, represents a tax in excess of 5.6% of said net premiums, the operation of such tax as to plaintiff being highly discriminatory and otherwise violative of its rights under the Fourteenth Amendment of the Constitution of the United States, other life insurance companies organized under state laws other than California and authorized to do business in the State of California but not accepting reinsurance being required to pay a tax equal only to 2.6% of net premiums received on California business.

Wherefore, plaintiff demands judgment against defendant for the sum of $10,831.33, together with interest thereon on half this sum from August 7, 1931, and on half this sum from January 23, 1932, and together with its proper costs.

Raymond Benjamin, Hartley F. Peart, Attorneys for Plaintiff.

Duly sworn to by Hartley F. Peart. Jurat omitted in printing.

[fol. 19] (Endorsed:) Receipt of a copy of the within this 27 day of May, 1936, is hereby admitted.

U. S. Webb, Attorney General, Neil Cunningham, Deputy. D.

[File endorsement omitted.]

IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

DEMURRER—Filed June 8, 1936

Comes now the defendant Charles G. Johnson, as Treasurer of the State of California, and demurs to the plaintiff's complaint herein and for grounds of demurrer alleges that said complaint does not state facts sufficient to constitute a cause of action.

Wherefore, defendant prays that plaintiff take nothing by its action and for his costs of suit herein expended.

U. S. Webb, Attorney General; Neil Cunningham, Deputy Attorney General; James J. Arditto, Deputy Attorney General, Attorneys for Defendant.

[fol. 20] (Endorsed:) Service of the within demurrer admitted this 8th day of June, 1936.

Hartley F. Peart, Attorney for Plaintiff.

[File endorsement omitted.]

IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

ORDER SUSTAINING DEMURRER TO COMPLAINANT—June 8, 1936

In this action, it is ordered, that the demurrer to the complaint be sustained without leave to amend.

IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

JUDGMENT—Filed June 10, 1936

An order having been entered in this action on the 8th day of June, 1936, sustaining the demurrer to the amended

complaint herein without leave to plaintiff to further amend its said complaint,

Now, on motion of U. S. Webb, Attorney General, by Neil Cunningham, Deputy Attorney General, attorneys for said [fol. 21] defendant, it is ordered and adjudged that the amended complaint herein be, and the same is hereby dismissed.

Dated this 10th day of June, 1936.

Frank T. Deasy, Judge of the Superior Court.

(Endorsed:) Receipt of copy of the within judgment admitted this 10th day of June, 1936.

Raymond Benjamin, Hartley F. Peart, Attorneys for Plaintiff.

[File endorsement omitted.]

Recorded June 11, 1936, 2:05 o'clock P. M., volume 392, page 97.

Robert Munson, Clerk, by F. J. Meincke, Deputy Clerk.

[fol. 22] Clerk's certificate to judgment roll omitted in printing.

[fol. 23] IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

NOTICE OF APPEAL TO SUPREME COURT—Filed July 3, 1936

To W. R. Castagnetto, County Clerk and Ex-officio clerk of the Superior Court of the State of California, in and for the City and County of San Francisco; and to Charles G. Johnson, as Treasurer of the State of California, the defendant above named; and to U. S. Webb, Attorney General of the State of California; and to Neil Cunningham and James J. Arditto, Deputy Attorneys General of the State of California, attorneys for said defendant above named:

You and each of you will please take notice that the plaintiff above named hereby appeals to the Supreme Court of the State of California, from that certain judgment given, made and entered in the above entitled action in favor of

the defendant and against the plaintiff, which judgment is dated June 10, 1936, and was entered and recorded on June 11th, 1936, in book 392 of judgments at page 92 in the office of the clerk of the above entitled court.

This appeal is taken from the whole of said judgment.

[fol. 24] Dated, July 3, 1936.

Hartley F. Peart, Raymond Benjamin, Attorneys for Plaintiff.

(Endorsed:) Service and receipt of a copy of the within notice of appeal this 3d day of July, 1936, is hereby admitted.

U. S. Webb, Attorney General; Neil Cunningham, Deputy, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 25] IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

STIPULATION AS TO TRANSCRIPT ON APPEAL

It is hereby stipulated that the foregoing transcript on appeal is correct; that it contains full, true and correct copies of all the papers therein set forth now on file in the office of the county clerk of the City and County of San Francisco, State of California; that the said foregoing papers shall constitute the transcript on appeal in this cause and that the appeal may be heard and determined thereon.

Dated, August —, 1936.

U. S. Webb, Attorney General of the State of California; Neil Cunningham, James J. Arditto, Deputy Attorneys General of the State of California, Attorneys for Respondent. Raymond Benjamin, Hartley F. Peart, Attorneys for Appellant.

[fol. 26] Clerk's certificate to transcript on appeal omitted in printing.

[fol. 26½] Due service and receipt of a copy of the within is hereby admitted this — day of August, 1936.

U. S. Webb, Attorney General of the State of California, by James J. Arditto.

Received a copy of the within this 11 day of August, 1936, for the Judge who tried the cause.

W. R. Castagnetto, Clerk, by H. P. McGlenon, Deputy Clerk.

[fol. 27] [File endorsement omitted]

[fols. 28-30] IN SUPERIOR COURT OF CALIFORNIA, IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO, DEPT. NO. 2

No. 241,413

CONNECTICUT GENERAL LIFE INSURANCE COMPANY (a Corporation), Plaintiff,

vs.

CHARLES G. JOHNSON, as Treasurer of the State of California, Defendant

AMENDED COMPLAINT TO RECOVER PREMIUM TAXES—Filed March 5, 1936

Now comes plaintiff and by this amendment complains of the above named defendant and for cause of action alleges:

I

Plaintiff is a corporation duly created, organized and existing under and by virtue of the laws of the State of Connecticut, having its Home Office and principal place of business in the City of Hartford, State of Connecticut, and is and during all of the times herein mentioned and for many years prior thereto has been authorized to transact the business of life and accident and health insurance in the State of California and elsewhere; and defendant herein [fol. 31] is now the duly elected, qualified and acting Treasurer of the State of California.

II

That for many years prior to and during the year 1931 plaintiff sold a substantial volume of its life and accident and health contracts in the State of California to residents of that state, all of which business was conducted and transacted through its local agents in that state, which agents were licensed in accordance with the laws of the State

of California; and during the year 1931 plaintiff collected from its policyholders in California net premiums in the amount of $374,792.41, on account of this life and accident and health insurance business which it conducted in California, and plaintiff, in accordance with the law, reported this amount in its annual statement to the California Insurance Department covering the year 1931, which statement was submitted prior to the 1st day of March, 1932.

III

The aforementioned life and accident and health insurance business was conducted within the State of California in accordance with authority granted to plaintiff by the State of California, acting through its Insurance Commissioner, which issued to plaintiff certificates of authority [fol. 32] for the year commencing July 1, 1930, and ending June 30, 1931, and also for the period commencing July 1, 1931, and ending June 30, 1932. Said certificates of authority and both of them granted to plaintiff authority "to transact the business of life and accident and health insurance within said state," to-wit, the State of California, but neither certificate of authority authorized plaintiff to transact in California any other type of business except the three types above mentioned, all of which are recognized as types of insurance business under Section 594 of the Political Code of the State of California.

IV

In addition to the aforementioned life and accident and health insurance business which the plaintiff was authorized to and did conduct in the State of California during the year 1931 and for many years prior thereto, the plaintiff was also authorized, under and by virtue of the laws of the State of Connecticut but not under or by virtue of the laws of the State of California, to transact a life reinsurance business, and plaintiff did in fact transact a large volume of this type of business during 1931, it being one of the principal life reinsurance companies of the United States. Prior to the [fol. 33] first day of January, 1931, plaintiff made and entered into in Hartford, Connecticut, and wholly without the boundaries of the State of California, certain agreements or treaties of reinsurance with other life insurance companies under the terms of which plaintiff reinsured certain other life insurance companies hereinafter referred

to as reinsured companies, which reinsured companies were authorized to and were doing business in various states of the United States, including the State of California, in some of which states plaintiff was likewise authorized to do business and in other of which states plaintiff was not authorized to do business. Under the terms of the aforesaid reinsurance agreements or treaties plaintiff agreed to indemnify the reinsured companies for a part or all of the liability which these reinsured companies might incur under one or more of the policies or contracts of life insurance of the reinsured companies issued by the reinsured companies to residents of various states of the United States, including residents of the State of California.

V

No act or transaction whatsoever which the plaintiff had or did in connection with the aforesaid reinsurance agreements or treaties occurred within the State of California, nor did plaintiff have any dealings with nor assume any [fol. 34] liability whatsoever toward or collect any premiums from any of the policyholders of the reinsured companies, nor did it issue any policy to any policyholders of the reinsured companies, nor did it issue any policy to the reinsured companies. All transactions in connection with the aforesaid reinsurance business were conducted by plaintiff and said reinsured companies through the use of the United States Mail, and no agent of plaintiff in California at any time had any dealings with the aforesaid reinsurance business, the general life and accident and health insurance business of plaintiff in California and the aforesaid reinsurance business being entirely separate and distinct, and no records of plaintiff in connection with the aforesaid reinsurance business were kept or maintained within the State of California during any of the times herein mentioned.

VI

All considerations which the plaintiff received from the reinsured companies under the terms of the reinsurance agreements or treaties were sent to and received by plaintiff in the form of checks mailed through the United States Mail to plaintiff's Home Office at Hartford, Connecticut, from the Home Office of the aforesaid reinsured companies in various states of the United States. Likewise, any sums

[fol. 35] due from plaintiff to said reinsured companies under the terms of the aforesaid reinsurance agreements or treaties were paid by plaintiff by mailing at Hartford, Connecticut, through the United States Mail, a check in a letter addressed to the reinsured company entitled thereto.

VII

During the year 1931 plaintiff received by check through the United States Mails at Hartford, Connecticut, on account of the aforesaid reinsurance business from the companies it reinsured net considerations amounting to $419,467.69 on account of reinsurance granted to the reinsured companies where the reinsured companies had issued policies or contracts to residents of the State of California.

VIII

Prior to the first Monday in March, 1932, in accordance with the provisions of the Political Code of the State of California and in further accordance with the requirements of the Insurance Commissioner of the said State, and upon blanks and forms furnished by him, plaintiff did file with said Insurance Commissioner a statement showing the amount of life, accident and health insurance done by it in said State of California during the year ending December [fol. 36] 31, 1931, and conducted as aforesaid, and the sum in premiums collected by plaintiff therefor in the State of California, amounting to $374,792.41. Because said blanks so furnished by said Insurance Commissioner required and because said Insurance Commissioner required of the plaintiff, and not otherwise, plaintiff also in said statement set forth and returned fully to said Insurance Commissioner the true amount of all considerations paid to and received on account of its reinsurance business conducted as aforesaid with other insurance companies in regard to policies or contracts of insurance issued by such other insurance companies to residents of the State of California, amounting to the sum of $419,467.69, so that said Insurance Commissioner was in and by said statement fully advised respecting the true character of plaintiff's business for said year in said State of California and the extent and character of the protest hereinafter referred to.

IX

Thereafter and on or before the last day of March, 1932, said Insurance Commissioner duly and regularly made and filed with the State Board of Equalization of said State of California a report showing, among other things, the following:

[fol. 37] 1. The total amount of office or tabular premiums, denominated by said Insurance Commissioner as gross premiums, being the premiums specified to be paid in and by said policies, without any deductions therefrom, receivable by plaintiff for said year commencing January 1, 1931, and ending December 31, 1931, in the course of the said business done by it in said State of California.

2. The total amount of all gross premiums, meaning thereby the total premiums received by plaintiff for the said year from its said business done by it in said State of California.

3. The total amount of all premiums or portions thereof payable and specified to be paid in and by said policies to plaintiff by its said policyholders during the same period of time on its said business done in said State of California and applied to pay renewal premiums thereof as aforesaid.

4. The total amount of all premiums returned or paid by plaintiff to its said policyholders during the same period of time on its said business done in said State of California.

5. The total amount of all payments made to plaintiff by insurer companies during the same period of time under and in pursuance of said reinsurance agreements or treaties.

[fol. 38] X

That when assessing and levying a tax upon the property and franchise of plaintiff in the State of California in accordance with Subdivision (b) of Section 14, Article XIII of the Constitution of California, and Sections 3664-3671 of the Political Code of said state, said State Board of Equalization included as part of the gross premiums received by plaintiff from its business done in the State of California as referred to in said statute and constitutional provision, the total of all moneys paid to and received by plaintiff on account of its aforesaid reinsurance business;

that the amount so received by plaintiff during 1931 on account of this reinsurance business was $419,467.69 where policies were issued by the reinsured companies to residents of California; that on the life and accident and health insurance business which plaintiff in fact did transact in the State of California during the year 1931 the amount of gross premiums received by plaintiff was $374,792.41; that in levying a commuted tax upon the property and franchise of plaintiff in California said State Board of Equalization wrongfully and unlawfully taxed plaintiff by computing said tax at 2.6% of the sum of $749,260.10 instead of 2.6% of the sum of $374,792.41, as the same should have been computed, and said State Board of Equalization [fol. 39] wrongfully and unlawfully refused to exclude from such computation the sum of $419,467.69, constituting the moneys received by plaintiff by United States Mail at its Home Office in Hartford, State of Connecticut, on account of its reinsurance business conducted as hereinbefore set out in detail.

The said State Board of Equalization duly and regularly met in the State Capitol at Sacramento, California, on the first Monday in March, 1932, as required by law, and thereafter there continued in open session from day to day, Sundays and holidays excepted, until the first Monday in July, 1932. Between said first Monday in March and the third Monday before the first Monday in July, 1932, the said State Board of Equalization assessed and levied against the property and franchise (except real estate) of said corporation located in the State of California, a tax computed at the rate of 2.6% upon the sum of $794,260.10 amounting to the sum of $20,650.76.

XI

Plaintiff alleges that before making its computation for levying and assessing said tax as heretofore set forth, said State Board of Equalization should have, from the total sum reported to said Board by said Insurance Commissioner as plaintiff's gross premiums from its business done [fol. 40] in the State of California, deducted the sum of such reinsurance considerations, to-wit, the sum of $419,467.69, received by plaintiff, as hereinbefore set out; that said State Board of Equalization failed and refused to make said deduction and imposed a tax purported to be

upon plaintiff's property and franchise (except real estate) located in the State of California, which tax was computed at the rate of 2.6% thereon, and which tax on such reinsurance considerations amounted to $10,906.16; all of said tax so levied and assessed computed on the basis of the aforesaid reinsurance business was void and illegal and wrongfully assessed under and by virtue of Section 14 of Article XIII of the Constitution of the State of California and is a tax upon the property and business of plaintiff located without the jurisdiction of the State of California in violation of the fourteenth Amendment of the Constitution of the United States.

XII

The said State Board of Equalization, prior to the said first Monday of July, 1932, prepared a book in one or more volumes called "record of assessment for State Taxes", in which were entered in writing and printing each and every assessment and levy made by said Board including the [fol. 41] assessment and levy against plaintiff hereinbefore particularly referred to; and on the first Monday in July, 1932, the Secretary of said Board of Equalization delivered to the State Controller of said State its said record of said assessments for state taxes duly certified to by the Chairman and Secretary of said State Board.

XIII

Thereafter and on or before the fifteenth day of August, 1932, plaintiff involuntarily and under protest paid to defendant the sum of $5,453.08, representing the tax levied and assessed against plaintiff on the basis of the reinsurance business not conducted in the State of California, which tax was wrongfully levied and assessed against plaintiff, and at the same time plaintiff paid to defendant the sum of $4,872.30, representing the tax levied and assessed against plaintiff on account of its gross premiums derived from its life and accident and health insurance business which plaintiff did in fact conduct in California, these payments representing one-half of the taxes levied and assessed for the year 1931. Likewise, on or before the second day of February, 1933, plaintiff paid to defendant similar amounts, the payment of $5,453.08 on account of plaintiff's reinsurance business being made involuntarily and under

protest. At the time of making each of said payments of [fol. 42] taxes as hereinbefore set out in this paragraph, plaintiff, being dissatisfied with the assessment so made against it as aforesaid, filed with said State Controller of the State of California a written protest stating what part of said tax was claimed by it to be void and illegal, to-wit, the sum of $10,906.16, and the grounds upon which said claim was founded. In and by said written protest plaintiff stated and claimed what amounts were improperly included in the gross premiums upon which said State Board of Equalization computed said tax, to-wit, the amount of

XIV

That in assessing and levying taxes upon the property of plaintiff as authorized by Subdivision (b) of Section 14 of Article XIII of the Constitution of California, the taxing authorities of said state, to-wit, the State Board of Equalization, have adopted and followed a construction of said Section of said State Constitution, which results in a tax on plaintiff's property and franchise not located in said state and in violation of plaintiff's rights under the Fourteenth Amendment of the Constitution of the United States. Said State Board of Equalization in computing the tax upon said reinsurance considerations levied a tax on account of business not done in the State of California, [fol. 43] and on contracts executed wholly and to be performed and in fact performed wholly without the boundaries of the State of California. If said Subdivision (b) of Section 14 of Article XIII of the Constitution of California is construed so as to tax plaintiff on the basis of the reinsurance considerations received as aforesaid, then this provision is invalid and invalid as to plaintiff as being in conflict with and in violation of the Constitution of the United States and particularly the Fourteenth Amendment thereof and that section of the Fourteenth Amendment prohibiting the taking of property without due process of law.

XV

If Subdivision (b) of Section 14, Article XIII of the Constitution of California taxes plaintiff on the basis of its reinsurance business conducted as aforesaid, then it is invalid as to plaintiff as in conflict with the Fourteenth

Amendment to the Constitution of the United States and particularly that section of the Fourteenth Amendment, prohibiting the taking of property without due process of law in that a tax is levied against plaintiff on account of a franchise not granted to plaintiff by the State of California and a privilege not exercised by plaintiff within the State of California, plaintiff being authorized to conduct [fol. 44] and conducting in the State of California only the business of life and accident and health insurance in accordance with the certificates of authority from the State of California as hereinbefore referred to.

XVI

In levying the aforementioned tax against plaintiff based on the reinsurance considerations received by plaintiff outside of the State of California, the state denies to plaintiff the equal protection of its laws contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States in that plaintiff is required because of the peculiar type and distribution of its business to pay to defendant for the year 1931 a tax of $20,650.76 for the privilege of doing business in the State of California. This tax as measured by the business which plaintiff in fact did in the State of California during 1931, to-wit, the receipt by plaintiff of net premiums in the amount of $374,792.41, represents a tax in excess of 5.6% of said net premiums, the operation of such tax as to plaintiff being highly discriminatory and otherwise violative of its rights under the Fourteenth Amendment of the Constitution of the United States, other life insurance companies organized under state laws other than California and authorized to do busi- [fol. 45] ness in the State of California but not accepting reinsurance being required to pay a tax equal only to 2.6% of net premiums received on California business.

Wherefore, plaintiff demands judgment against defendant for the sum of $10,906.16, together with interest thereon on half this sum from August 15, 1932, and on half this sum from February 2, 1933, and together with its proper costs.

Raymond Benjamin, Hartley F. Peart, Attorneys for Plaintiff.

Daly sworn to by Hartley F. Peart. Jurat omitted in printing.

[fol. 46] Affidavit of Service of Amended Complaint

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Kenneth L. White, being duly sworn, deposes and says: That on the 4th day of March, 1936, Neil Cunningham, Esq., Deputy Attorney General of the State of California, attorney for defendant in the above entitled action, was absent from his office, and that during such absence he, the said Kenneth L. White, served upon the said Neil Cunningham, Esq., at his office in the State Building, Civic Center, in said [fol. 47] County and State, a full and true copy of the within amended complaint to recover premium taxes, by leaving said copy in said office, with Ray Dibble, the person then having charge of said office.

Kenneth L. White.

Subscribed and sworn to before me this 5th day of March, 1936. R. A. Anderson, Notary Public in and for the City and County of San Francisco, State of California. My commission expires December 31, 1938. (Seal.)

[File endorsement omitted.]

IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

DEMURRER—Filed May 20, 1936

Comes now the above named defendant and demurs to the amended complaint of the above named plaintiff herein upon the ground that said amended complaint fails to state facts sufficient in law to constitute a cause of action against said defendant.

Whereas, defendant prays that said amended complaint be dismissed.

[fol. 48] Dated, May 19, 1936.

U. S. Webb, Attorney General of the State of California; Neil Cunningham, Deputy Attorney General; James J. Arditto, Deputy Attorney General, Attorneys for Defendant.

(Endorsed:) Service of the within demurrer to amended complaint admitted this 20th day of May, 1936.

Raymond Benjamin, Hartley F. Peart, Attorneys for Plaintiff.

[File endorsement omitted.]

IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

ORDER SUSTAINING DEMURRER TO COMPLAINT—June 8, 1936

In this action, it is ordered, that the demurrer to the complaint be sustained without leave to amend.

[fol. 49] IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

JUDGMENT—Filed June 10, 1936

An order having been entered in this action on the 8th day of June, 1936, sustaining the demurrer to the amended complaint herein without leave to plaintiff to further amend its said complaint,

Now, on motion of U. S. Webb, Attorney General, by Neil Cunningham, Deputy Attorney General, attorneys for said defendant, it is hereby ordered and adjudged that the amended complaint herein be, and the same is hereby dismissed.

Dated, June 10, 1936.

Frank T. Deasy, Judge of the Superior Court.

(Endorsed:) Receipt of copy of the within judgment admitted this 10th day of June, 1936.

Raymond Benjamin, Hartley F. Peart, Attorneys for Plaintiff.

[File endorsement omitted.]

Recorded Jun. 11, 1936, 4:00 o'clock P. M., volume 391, page 218.

Robert Munson, Clerk, by R. D. Carroll, Deputy Clerk.

[fol. 50] Clerk's certificate to judgment roll omitted in printing.

[fol. 51] IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

NOTICE OF APPEAL TO SUPREME COURT—Filed July 3, 1936

To W. R. Castagnetto, county clerk and exofficio clerk of the Superior Court of the State of California, in and for the City and County of San Francisco; and to Charles G. Johnson, as treasurer of the State of California, the defendant above named; and to U. S. Webb, attorney general of the State of California; and to Neil Cunningham and James J. Arditto, deputy attorneys general of the State of California, attorneys for said defendant above named:

You and each of you will please take notice that the plaintiff above named hereby appeals to the Supreme Court of the State of California, from that certain judgment given, made and entered in the above entitled action in favor of the defendant and against the plaintiff, which judgment is dated June 10, 1936, and was entered and recorded on June 11th, 1936, in book 391 of judgments at page 218 in the office of the clerk of the above entitled court.

This appeal is taken from the whole of said judgment.

[fol. 52] Dated, July 3, 1936.

Raymond Benjamin, Hartley F. Peart, Attorneys for Plaintiff.

(Endorsed:) Service and receipt of a copy of the within notice of appeal this 3rd day of July, 1936, is hereby admitted.

U. S. Webb, Attorney General; by Neil Cunningham, Deputy, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 53] IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

STIPULATION AS TO TRANSCRIPT ON APPEAL

It is hereby stipulated that the foregoing transcript on appeal is correct; that it contains full, true and correct copies of all the papers therein set forth now on file in the office of the county clerk of the City and County of San Francisco, State of California; that the said foregoing papers shall constitute the transcript on appeal in this cause and that the appeal may be heard and determined thereon.

Dated, August 11, 1936.

U. S. Webb, Attorney General of the State of California; Neil Cunningham, James J. Arditto, Deputy Attorneys General of the State of California, Attorneys for Respondent. Raymond Benjamin, Hartley F. Peart, Attorneys for Appellant.

[fol. 54] Clerk's certificate to transcript on appeal omitted in printing.

[fol. 54½] Due service and receipt of a copy of the within is hereby admitted this — day of August, 1936.

U. S. Webb, Attorney General of the State of California, by James J. Arditto, ——— ———, Deputy Attorneys General of the State of California, Attorneys for Respondent.

Received a copy of the within this 11 day of August, 1936, for the Judge who tried the cause.

W. R. Castagnetto, Clerk, by H. P. McGlenon, Deputy Clerk.

[fol. 55] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

S. F. No. 15724

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, a Corporation, Plaintiff and Appellant,

vs.

CHARLES G. JOHNSON, as Treasurer of the State of California, Defendant and Respondent

S. F. No. 15725

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, a Corporation, Plaintiff and Appellant,

vs.

CHARLES G. JOHNSON, as Treasurer of the State of California, Defendant and Respondent

STIPULATION TO CONSOLIDATE—Filed August 29, 1936

It is Hereby Stipulated by and between the parties to each of the above entitled actions that the appeals of the appellant, Connecticut General Life Insurance Company, from the judgment in each of said actions in favor of the respondent, be consolidated for hearing and determination on appeal; and that the appellant shall serve and file one opening brief on appeal in support of its said appeals in both cases, and the respondent, Charles G. Johnson, as Treasurer of the State of California, shall serve and file [fol. 56] one reply brief thereto, and said appellant, one closing brief.

U. S. Webb, Attorney General of the State of California; Neil Cunningham, James J. Arditto, Deputy Attorneys General of the State of California, Attorneys for Charles G. Johnson, as Treasurer of California, Respondent. Raymond Benjamin, Hartley F. Peart, Attorneys for Connecticut General Life Insurance Company, Appellant.

By the COURT:

On foregoing stipulation so ordered Aug. 29, 1936.

Waste, Chief Justice.

[File endorsement omitted.]

[fol. 57] IN SUPREME COURT OF CALIFORNIA

S. F. No. 15724. In Bank. April 26, 1937

CONNECTICUT GENERAL LIFE INSURANCE COMPANY (a Corporation), Plaintiff and Appellant,

v.

CHARLES G. JOHNSON, as Treasurer of the State of California, Defendant and Respondent

S. F. No. 15725. In Bank. April 26, 1937

CONNECTICUT GENERAL LIFE INSURANCE COMPANY (a Corporation), Plaintiff and Appellant,

v.

CHARLES G. JOHNSON, as Treasurer of the State of California, Defendant and Respondent

OPINION

These two actions, while appealed separately, have been argued together, and as they present the same identical question, they may and will be considered in one opinion. The only difference in the two actions, is that in action S. F. No. 15724 the plaintiff seeks to recover taxes paid for the calendar year 1930, while in action S. F. No. 15725 recovery is sought for the year 1931. These actions differ in no material respect from the two actions bearing the same title and reported in 3 Cal. (2d) 83, except as to the years during which the taxes involved accrued. In our decision in those actions we held that the taxes paid by plaintiff which it sought to recover in those actions, were [fol. 58] legally levied and collected and the plaintiff was not entitled to recover any portion of the taxes so paid by it. As to all the questions involved in those appeals which were discussed and decided therein, we adhere to the conclusions reached by us in that decision.

The present actions were pending at the time the former cases were decided. On the going down of the remittitur in the former appeals, the plaintiff amended its complaints in the two instant actions by expressly pleading the fourteenth amendment to the Constitution of the United States and alleging that the assessment and levy of a tax against

plaintiff on the basis of its reinsurance business transacted during the two years covered by the complaints in these actions violated the provisions of this section of the federal Constitution.

There are set forth in said amended complaints, three grounds upon which the plaintiff relies in support of its contention that the assessment and levy of said tax against it violated the fourteenth amendment of the United States Constitution. These grounds are now relied upon by the plaintiff in support of its appeals herein.

It is first contended that the state board of equalization in computing the tax upon the reinsurance business of plaintiff levied a tax on account of business not done in the state of California and on contracts executed wholly and performed entirely without this state. This contention was the basis of the plaintiff's argument upon the former appeals, and it was decided adversely to plaintiff. We see no good reason for restating our position upon this question as our former decision fully answers the present contention of plaintiff.

It is next contended that the computation of said tax upon the basis of reinsurance done by plaintiff is violative of said constitutional section, and is the taking of plaintiff's property without due process of law in that said tax is levied against plaintiff on account of a transaction and privilege not granted to plaintiff by the state of California and not exercised by the plaintiff within this state. Plaintiff alleges that the plaintiff during the years for which said tax was levied held a legal and valid certificate of authority issued by the officials of this state authorizing it to do and transact the business of life and accident and health insurance within this state. It further alleges that neither of these certificates of authority authorized plaintiff to transact in California any other type of insurance except the three types above mentioned, all of which are recognized as types of insurance under section 594 of the Political Code of the state of California.

This section of the code was amended in 1933, and in 1935 the Insurance Code was adopted, which superseded section 594 of the Political Code classifying insurance business. As these amendments were subsequent to the years during which the taxes herein involved accrued, the present actions are governed by the provisions of section 594 of the Political Code prior to its amendment in 1933. Neither the amend-

ment of 1933 nor the provisions of the Insurance Code change the law in any material respect, in so far as it applies to any point raised in these actions, from what it was prior to the year 1933. Section 594 of the Political Code provides for some twenty different classes of insurance for which certificates of authority may be issued in this state. No mention is made of reinsurance in said section as a separate class of insurance which may be carried on in this state. This does not mean that the business of reinsurance may not be carried on in this state. It may [fol. 59] mean, however, that the business of reinsurance is included in the respective classes of insurance enumerated in said section of the code. That is to say, that a certificate of authority to engage in the business of fire insurance includes the authority to engage in the business of fire reinsurance.

"Reinsurance contracts as a general rule, involve no legal principles essentially different from those applicable to contracts generally, nor does the contract necessarily differ in form from original insurance. And reinsurance was a valid contract at common law and * * * has generally been regarded as a legitimate and valid contract; reinsurance now being generally practiced." (Cyclopedia of Insurance Law, Couch, vol. 1, p. 65, sec. 44.) Again, the same author makes the following statement: "An insurance company empowered 'to make contracts of insurance' or 'all kinds of insurance against losses by fire', may make a contract of reinsurance. * * *" (Vol. 8, p. 7393, sec. 2258.) We find the identical statement in Joyce on I-surance, volume 1, page 345, section 115.

The case of New York Bowery Fire Insurance Company v. The New York Fire Insurance Company of New York, 17 Wendell (N. Y.) 359, seems to be the foundation for the above statement quoted above from the works of the two well-known authors. In that case we find the question discussed as follows: "It is objected that these companies had no authority under their charters of incorporation to enter into the contract of re-assurance. By the 6th section of the Act incorporating the plaintiffs, Laws of 1832, p. 292, they have power 'to make contracts of insurance against loss by fire of any houses or buildings whatsoever, and of any goods, chattels or personal estate whatsoever'. By the 6th section of the Act incorporating the Bowery Co: Laws of 1833, p. 296, they have power 'to make all kinds of

insurance against losses by fire, of any houses and buildings whatsoever; and also upon all goods, wares and merchandise whatsoever'. Re-assurance is but a modification of the contract of insurance, and is, I think, clearly included in the power of the plaintiffs, 'to make contracts of insurance', and of the defendants 'to make all kinds of insurance' against losses by fire. * * *"

Section 594 of the Political Code enumerates all the different classes of insurance authorized to be transacted in this state. It does not mention reinsurance. If reinsurance business is not included within one or more of the different classes of insurance mentioned in this code section, then there is no law in this state governing that class of insurance, and it might follow that that type of insurance business is not permitted in this state. In the adoption of the Insurance Code in 1935, the insurance law of the state was rewritten, and in many instances material changes were made therein. Yet in this latest legislative enactment on the subject, we find no mention made of reinsurance as a separate and distinct type from ordinary insurance although other references are made therein to the business of reinsurance. In fact, the Insurance Code follows verbatim the classification of the different classes of insurance enumerated in section 594, Political Code, prior to its repeal. It is hardly reasonable that the commission which framed the Insurance Code, and the legislature which enacted the bill proposed by the commission into law, as well as section 594, Political Code, and its amendment, intended to leave the business of reinsurance without regulation in this state. The only reasonable conclusion to be drawn from their actions as well as from the authorities cited above, is that the business of reinsurance is but a modification of ordinary [fol. 60] insurance and is included in a certificate authorizing an insurance company to carry on any of the general lines of insurance mentioned in the statute. The plaintiff, therefore, cannot legally claim that during the times mentioned in the amended complaints in these actions, the certificates of authority issued to it to transact the business of life, accident and health insurance, did not authorize it to do a reinsurance business in these three classes of insurance. It is true that plaintiff has alleged that it had no certificate of authority to transact reinsurance business in this state. While the demurrers admit all allegations of fact in the amended complaints, they do not admit the truth of

conclusions of law. The allegation as to the want of authority of the plaintiff to do a reinsurance business in this state comes within this latter class of allegations and is not admitted by demurrer. The section of the Constitution of this state under which the tax was levied against the plaintiff is not therefore violative of the provisions of the fourteenth amendment of the federal Constitution which prohibits the taking of property without due process of law in that it permits the levying of a tax against plaintiff on account of a franchise not granted to plaintiff or exercised by it in this state. As we have seen, plaintiff has enjoyed and exercised this franchise during the entire time involved in these actions.

Plaintiff further claims that this section of the federal Constitution is violated in that the tax officials of this state in computing the tax against the plaintiff, included its reinsurance business, and thereby denied to plaintiff the equal protection of the law. Plaintiff bases this claim upon its statement that under the law in force during the years mentioned, the rate of taxation against all persons and companies doing an insurance business was fixed at 2.6 per cent of their gross premiums, and that by compelling plaintiff to pay a tax of 2.6 per cent based upon gross premiums received by it, not only from its general insurance business but also upon its reinsurance business, such tax amounted to more than 5.6 per cent of its gross premiums received from its general insurance business. Therefore, plaintiff claims that other insurance companies which transact business in this state but do not accept reinsurance business are only required to pay a tax equal to 2.6 per cent of their gross premiums while plaintiff is required to pay a tax equal to 5.6 per cent of its gross premiums. To state this proposition is to show its fallacy. Plaintiff is only required to pay a tax equal to 2.6 per cent of its gross premiums received from its entire business which, of course, includes its reinsurance business. All other companies accepting reinsurance business pay at the same rate, and companies which do not accept reinsurance pay the same tax based upon the business transacted by them. There is, therefore, no discrimination against the plaintiff as it is taxed at the same rate at which others engaged in a similar business are taxed.

Article XII, section 14 (b) of the Constitution of this state permits a deduction of reinsurance premiums from

the amount of the gross premiums received by an insurance company doing business in this state, for the purpose of computing the amount of taxes to be paid by said company. The evident purpose and intent of this provision of the Constitution are to avoid double taxation without any loss of revenue to the state. This deduction can only be made when the company which reinsures is "authorized to do business in this state". We have shown that the plaintiff was during the years herein involved, authorized to do not [fol. 61] only a life, accident and health insurance business, but a reinsurance business in this state. Plaintiff's business in reinsurance clearly came within the terms of the constitutional section which permitted a deduction from gross premiums of premiums paid for reinsurance. Plaintiff undoubtedly received a benefit from this deduction as the companies whose risks it has reinsured, being relieved of taxes to the extent of the business transacted with plaintiff, could pay to plaintiff a higher premium than they could have paid had this deduction not been made. On the other hand, if it should be held that plaintiff is not liable for this tax, then no deduction should be made to the companies with which the plaintiff is doing a reinsurance business, with the result that these companies would not be able to pay to the plaintiff the rates which it is now receiving. In such a case, it would be necessary for the plaintiff either to refuse this business or to reduce its premiums if it expected to hold this reinsurance business. We, however, are of the opinion that, as the plaintiff was authorized to do reinsurance business in this state during the entire time at which the tax against it was levied, the state officials in levying the tax for those years correctly deducted from the gross premiums of the companies reinsuring with the plaintiff, the premiums paid to plaintiff, and that the plaintiff was liable for the tax computed upon its entire business transacted during those years, including its reinsurance of risks to property situated in this state.

The judgments are affirmed.

Curtis, J.

We concur: Edmonds, J. Shenk, J. Thompson, J. Langdon, J.

[fol. 62] IN SUPREME COURT OF CALIFORNIA, BANK

San Francisco, No. 15724

CONNECTICUT GENERAL LIFE INSURANCE COMPANY (a Corp.), Plaintiff, Appellant,

vs.

CHARLES G. JOHNSON, as Treasurer of the State of California, Defendant, Respondent

On Appeal from the Superior Court in and for the City and County of San Francisco

JUDGMENT—April 26, 1937

The above entitled cause having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It is Ordered, Adjudged, and Decreed by the Court that the Judgment of the Superior Court in and for the City and County of San Francisco in the above entitled cause, be and the same is hereby affirmed. Respondent to recover costs on appeal.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 63] IN SUPERME COURT OF CALIFORNIA, BANK

San Francisco, No. 15725

CONNECTICUT GENERAL LIFE INSURANCE COMPANY (a Corp.), Plaintiff, Appellant,

vs.

CHARLES G. JOHNSON, as Treasurer of the State of California, Defendant, Respondent

On Appeal from the Superior Court in and for the City and County of San Francisco

JUDGMENT—April 26, 1937

The above entitled cause having been heretofore fully argued, and submitted and taken under advisement, and all

and singular the law and premises having been fully considered,

It is Ordered, Adjudged, and Decreed by the Court that the Judgment of the Superior Court in and for the City and County of San Francisco in the above entitled cause, be and the same is hereby affirmed. Respondent to recover costs on appeal.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 64] IN SUPREME COURT OF CALIFORNIA

S. F. No. 15724, S. F. No. 15725 (Consolidated Cases)

[Titles omitted]

PETITION FOR APPEAL—Filed July 21, 1937

To the Chief Justice of the Supreme Court of the State of California:

Connecticut General Life Insurance Company, a Connecticut corporation (hereinafter called Conn. General), respectfully shows that:

I

Conn. General is the appellant in the above entitled causes.

II

The appeal in said causes was from judgments rendered in civil actions on the 10th day of June, 1936, by the Superior Court of the State of California, in and for the City and County of San Francisco against Conn. General and in favor of the above named respondent, after said Court had [fol. 65] sustained respondent's general demurrers to Conn. General's amended complaints without leave to amend, and dismissed the complaints.

III

On appeal by Conn. General from said judgments to the Supreme Court of California (said Court being the highest court of law and equity in said State in which a decision of the matter in controversy could be had), the judgments appealed from were in all respects affirmed by the final

judgments entered in the Supreme Court of California on the 27th day of May, 1937, the opinion being filed on the 26th day of April, 1937.

IV

There is error in the final judgments and the record of proceedings in these causes in the said Supreme Court of California, whereby Conn. General is aggrieved in that in the decisions and judgments of said Court there was drawn in question the validity of Article XIII, Section 14 (b), of the Constitution of California, on the ground that as interpreted and applied by the State tax authorities a tax was levied under said provision of the State Constitution on account of property of Conn. General outside the jurisdiction of California, on account of a franchise not granted by California, on account of business not done in California, and on account of a contract executed wholly and to be and in fact performed wholly outside that State; that under Article XIII, Section 14 (b), of the Constitution of California, as applied by the State tax authorities, Conn. General was denied the equal protection of its laws by the State of California; all of which thereby rendered said provision of said Constitution repugnant to and in contravention of the Fourteenth Amendment to the Constitution of the United States; and that the decisions and judgments of said Court sustained said tax and the interpre-[fol. 66] tation of said provision of the State Constitution, as applied by the State tax authorities, and said Court rendered its decisions in favor of the legality of said tax and the validity of said provision of said State Constitution, as applied by said State tax authorities.

Wherefore, Conn. General prays for the allowance of an appeal from the aforesaid final judgments of the Supreme Court of the State of California against Conn. General to the Supreme Court of the United States, in order that the decisions and judgments of the Supreme Court of California may be examined and reversed, and further prays that a transcript of the record, proceedings and papers in these causes, duly authenticated by the Clerk of the Supreme Court of California, may be sent to the Supreme Court of the United States, as provided by law.

Conn. General further prays that the appeal herein may be a supersedeas; that an order be made fixing the security

required; that on approval of such security, such appeal may be allowed as a supersedeas.

The errors upon which Conn. General claims to be entitled to an appeal are those hereinbefore indicated and which are more fully set out in the assignment of errors filed herewith.

Dated this 21st day of July, 1937.

Raymond Benjamin, William Marshall Bullitt, Hartley F. Peart, Attorneys for Appellant and Petitioner.

[File endorsement omitted.]

[fol. 67] IN SUPREME COURT OF CALIFORNIA

S. F. No. 15724, S. F. No. 15725 (Consolidated Cases)

[Titles omitted]

ASSIGNMENT OF ERRORS—Filed July 21, 1937

Comes now the appellant above named, Connecticut General Life Insurance Company, a corporation of the State of Connecticut, and as appellant to the Supreme Court of the United States from the judgments and decisions heretofore entered herein, assigns as errors:

1. That the Supreme Court of California erred in refusing to reverse the judgments of the Superior Court of the State of California in and for the City and County of San Francisco.

2. That the Supreme Court of California erred in holding that under Article XIII, Section 14 (b), of the Constitution of California, and under the general laws of California, Conn. General was estopped to deny (this estoppel doctrine was set out in the former opinion and reaffirmed by reference in the opinion in these cases) that Conn. General's reinsurance business admittedly not done in California was done in California until Conn. General could show that the original or ceding company had paid the full tax on those premiums without exemption; and that the tax imposed [fol. 68] under this doctrine of "taxation of estoppel," as applied to Conn. General's reinsurance business admittedly done wholly outside the State of California, does not result

in the taking by California of Conn. General's property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

3. That the Supreme Court of California erred in holding that Article XIII, Section 14 (b), of the Constitution of California required Conn. General to pay a tax on account of its reinsurance business not done in California; and that by such tax so levied California does not take the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

4. That the Supreme Court of California erred in holding that Article XIII, Section 14 (b), of the Constitution of California required Conn. General to pay a tax upon reinsurance considerations never situated in California but received by mail by Conn. General at its Home Office in Hartford, Connecticut; and that the tax so levied was not a tax on property not located in the State of California; and that California does not thereby take the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

5. That the Supreme Court of California erred in holding that Article XIII, Section 14 (b), of the Constitution of California required Conn. General to pay a tax on account of contracts or treaties executed wholly and to be, and in fact, performed wholly outside that State; and that by such tax so levied California does not take the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 69] 6. That the Supreme Court of California erred in holding that Article XIII, Section 14 (b), of the Constitution of California required Conn. General to pay a tax on account of business not done in California, on account of contracts executed wholly and to be, and in fact, performed wholly outside that State; and that by such tax so levied California does not take the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

7. That the Supreme Court of California erred in holding that the reinsurance transactions in question were con-

ducted by Conn. General in pursuance of a franchise or privilege granted Conn. General by California (when in fact California granted Conn. General, at most, a franchise or privilege to conduct reinsurance business only in California and not elsewhere, and this appeal concerns only business done elsewhere); and that Article XIII, Section 14 (b), of the Constitution of California required Conn. General to pay a tax on account of this alleged franchise or privilege; and that as so construed or applied California does not thereby take the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

8. That the Supreme Court of California erred in holding that California had power to grant a franchise or privilege to Conn. General to conduct the reinsurance transactions in question, that it had granted a franchise or privilege authorizing Conn. General to conduct said reinsurance transactions (all of which were transactions executed and performed wholly outside of California), and that said alleged franchise or privilege empowered California to levy and collect a tax upon Conn. General measured by gross [fol. 70] premiums received from the aforesaid reinsurance transactions; and erred in holding that Conn. General, in doing the aforesaid reinsurance business outside of California, was exercising a privilege in California, and that this business was done under a franchise granted by California, and that Article XIII, Section 14 (b), of the Constitution of California required Conn. General to pay said tax on account of this alleged franchise or privilege; and that as so construed and applied California does not thereby take the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

9. That the Supreme Court of California erred in holding that Article XIII, Section 14 (b), of the Constitution of California required Conn. General to pay a tax on account of business not done in California, and that this tax was not a tax on account of a franchise not granted by California, nor a tax on account of a privilege not exercised in California; and that California does not thereby take the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

10. That the Supreme Court of California erred in holding that Article XIII, Section 14 (b), of the Constitution of California required Conn. General to pay a tax in excess of 5.4% (during each of the two years involved) of the net premiums received by Conn. General on account of business done in California when other life insurance companies organized under laws other than California and similarly situated and authorized to do business in California but which did not accept reinsurance business were required to pay a tax amounting only to 2.6% of the net premiums received on account of business done in California; and that the tax so levied on Conn. General was not arbitrary or discrimina-
[fol. 71] tory, nor did California thereby deny to Conn. General the equal protection of its laws in violation of the Fourteenth Amendment to the Constitution of the United States.

PRAYER FOR REVERSAL

For these errors, said appellant prays that the judgment of the Supreme Court of the State of California be reversed and judgment ordered granting to the appellant the relief prayed for in its appeal to the Supreme Court of the State of California from the tax assessments of which complaint is made.

Connecticut General Life Insurance Company, Appellant, Raymond Benjamin, William Marshall Bullitt, Hartley F. Peart, Attorneys for Appellant.

[File endorsement omitted.]

[fol. 72] IN SUPREME COURT OF CALIFORNIA

S. F. No. 15724, S. F. No. 15725 (Consolidated Cases)

[Titles omitted]

ORDER ALLOWING APPEAL—Filed July 21, 1937

On this 21st day of July, 1937, on reading the petition of Connecticut General Life Insurance Company, a corporation, the appellant herein (hereinafter called Conn. General), praying for the issuance of an order herein allowing

its appeal to the Supreme Court of the United States from the Supreme Court of California, and it appearing from the said petition, assignment of errors, statement as to the jurisdiction of the Supreme Court of the United States and the record of the above entitled cause that there was drawn in question the illegality of a tax levied, under Article XIII, Section 14 (b) of the Constitution of the State of California, upon Conn. General by the taxing authorities of California by reason of the inclusion in the gross premiums, (which constituted the measure of the amount of the tax levied upon Conn. General), of certain reinsurance considerations received by Conn. Gen- [fol.73] eral in Hartford, Connecticut from insurance companies whose principal places of business were in various states of the Union, and with whom Conn. General had in Hartford, Connecticut entered into contracts or treaties of reinsurance by which Conn. General agreed to indemnify said reinsured companies for a part or all of the liability which said reinsured companies might incur under one or more of the policies or contracts of life insurance of the reinsured companies issued by the reinsured companies to residents of the State of California (and residents of other states); and Conn. General having contended before the Supreme Court of California that said tax so levied as aforesaid was in fact a tax on property of appellant located without the jurisdiction of the State of California, was a tax on account of business not done in California, was a tax on account of contracts executed wholly and to be performed and in fact performed wholly without the boundaries of California, was a tax on account of a franchise not granted by California, was a tax on account of a privilege not exercised by Conn. General in California; and as construed and applied—California, under the aforesaid constitutional provision denied to Conn. General the equal protection of its laws, all in violation of the Fourteenth Amendment to the Constitution of the United States; and the decision of this Court considered that matter so urged by Conn. General and decided that neither said tax, nor said provision of the Constitution of the State of California, as interpreted and applied by the State tax authorities, was repugnant to the Fourteenth Amendment to the Constitution of the United States, and that said decision was in favor of the legality of said tax and of said provision

of the Constitution of California, as interpreted and applied [fol. 74] by said tax authorities.

Now, Therefore, it is Ordered by the undersigned, the Acting Chief Justice of the Supreme Court of the State of California, that said appeal be and the same is hereby allowed; and

It is Further Ordered that the appellant, Connecticut General Life Insurance Company, executed to the respondent, Charles G. Johnson, as Treasurer of the State of California, its bond with surety to be approved by the undersigned, in the sum of Five hundred (500.00) Dollars, conditioned according to law; and

It is Further Ordered that the Clerk of this Court within thirty (30) days from this date, make and transmit to the Clerk of the United States Supreme Court, under his hand and the seal of this Court, a transcript of the record and proceedings herein.

Dated July 21, 1937.

John W. Shenk, Acting chief Justice of the Supreme Court of the State of California.

[File endorsement omitted.]

[fols. 75-76] Citation, in usual form, showing service on Neil Cunningham, filed July 23, 1937, omitted in printing.

[fols. 77-79] Bond on Appeal for $500.00, approved and filed July 21, 1937, omitted in printing.

[fol. 80] IN SUPREME COURT OF CALIFORNIA

S. F. No. 15724, S. F. No. 15725 (Consolidated Cases)

[Titles omitted]

STIPULATION CONCERNING CONTENTS OF TRANSCRIPT OF RECORD—Filed July 23, 1937

To the Clerk of the Supreme Court of the State of California:

Pursuant to Rule 10, paragraph 2, of the Rules of the Supreme Court of the United States, you will please pre-

pare, transmit and deliver to the Clerk of the Supreme Court of the United States copies, duly certified as correct, of the following documents and records in the above entitled consolidated cases in connection with the appeal of Connecticut General Life Insurance Company, a corporation, heretofore allowed by the Chief Justice of the Supreme Court of the State of California, and heretofore filed by the said Connecticut General Life Insurance Company, a corporation:

1. The amended complaint; demurrer; minute order sustaining demurrer to complaint; judgment; notice of appeal; stipulation to transcript on appeal; and Clerk's [fol. 81] certificates to judgment roll and to transcript on appeal, all of which are contained in that certain transcript on appeal heretofore filed in the case of Connecticut General Life Insurance Company, a corporation, v. Charles G. Johnson, as Treasurer of the State of California, S. F. No. 15724.

2. The amended complaint; demurrer; minute order sustaining demurrer to complaint; judgment; notice of appeal; stipulation to transcript on appeal; and Clerk's certificates to judgment roll and to transcript on appeal, all of which are contained in that certain transcript on appeal heretofore filed in the case of Connecticut General Life Insurance Company, a corporation, v. Charles G. Johnson, as Treasurer of the State of California, S. F. No. 15725.

3. Stipulation and order consolidating appeals in re. S. F. Nos. 15724 and 15725, heretofore filed on August 29, 1936.

4. The opinion and decision of the Supreme Court of the State of California affirming the judgments of the Superior Court of the State of California in and for the City and County of San Francisco in the above entitled consolidated cases rendered April 26, 1937, and reported in California Decisions, Vol. 93, pp. 399-403.

5. Remittitur dated May 27, 1937, issued by the Supreme Court of the State of California to the Superior Court of the State of California, in and for the City and County of San Francisco.

6. The following papers filed with the Clerk of the Supreme Court of the State of California in connection with the appeal of Connecticut General Life Insurance Company, a corporation, plaintiff and appellant in the above entitled

consolidated cases, to the Supreme Court of the United States:

[fol. 82] (a) Petition for appeal;

(b) Assignment of errors;

(c) Separate statement as to jurisdiction, required by Paragraph 1 of Rule 12, as amended, of the Supreme Court of the United States;

(d) Order allowing appeal;

(e) Notice and statement to appellee pursuant to Rule 12;

(f) Admission of service of the papers above enumerated in subparagraphs (a) to (e) hereof;

(g) Citation (with affidavit of service);

(h) Bond.

7. This stipulation.

Dated July 21st, 1937.

U. S. Webb, Attorney General of the State of California; Neil Cunningham, Deputy Attorney General of the State of California, Attorneys for Charles G. Johnson, as Treasurer of the State of California, Appellee. Raymond Benjamin, William Marshall Bullitt, Hartley F. Peart, Attorneys for Connecticut General Life Insurance Company, a Corporation, Appellant.

[File endorsement omitted.]

[fol. 83] IN SUPREME COURT OF THE UNITED STATES

APPELLANT'S STATEMENT OF THE POINTS ON WHICH IT INTENDS TO RELY AND OF THE PARTS OF THE RECORD DESIGNATED TO BE PRINTED—Filed August 19, 1937

To the Clerk of the Supreme Court of the United States:

Appellant, Connecticut General Life Insurance Company, a corporation (hereinafter called Conn. General), hereby files this, its definite statement of the points on which it intends to rely and of the parts of the record which it thinks necessary for the consideration thereof, pursuant to the requirements of Rule 13, Paragraph 9 of the Rules of the Supreme Court of the United States.

[fol. 84] STATEMENT OF THE POINTS ON WHICH CONN. GENERAL INTENDS TO RELY

1. The Supreme Court of California erred in holding that under Art. XIII, Sec. 14(b) of the Constitution of California and under the general laws of California, Conn. General was estopped to deny that its reinsurance business admittedly not done in California was done in California until Conn. General could show that the original or ceding company had paid the full tax on those premiums without exemption; and that the tax imposed under this doctrine of "taxation by estoppel" as applied to Conn. General's reinsurance business admittedly done wholly outside of the State of California, results in the taking by California of Conn. General's property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

2. Art. XIII, Sec. 14(b) of the Constitution of California, which the Supreme Court of California has held requires Conn. General to pay a tax on account of its reinsurance business not done in California, is as so construed and applied in violation of and repugnant to the Fourteenth Amendment to the Constitution of the United States and results in the taking by California of the property of Conn. General without due process of law in violation of said Fourteenth Amendment.

3. The Supreme Court of California erred in holding that Art. XIII, Sec. 14(b) of the Constitution of California required Conn. General to pay a tax upon reinsurance considerations never situated in California, but received by mail by Conn. General at its home office in Hartford, Con-
[fol. 85] necticut; and that the tax so levied was in fact a tax on property not located in the State of California, so that California thereby took the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

4. The Supreme Court of California erred in holding that Art. XIII, Sec. 14(b) of the Constitution of California required Conn. General to pay a tax on account of contracts or treaties executed wholly and to be, and in fact, performed wholly outside that state; and that by such tax so levied, California has taken the property of Conn. General

without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

5. The Supreme Court of California erred in holding that Art. XIII, Sec. 14(b) of the Constitution of California required Conn. General to pay a tax on account of business not done in California, on account of contracts executed wholly and to be, and in fact, performed wholly outside of that state; and said Supreme Court of California erred in holding that by such tax so levied California does not take the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

6. The Supreme Court of California erred in holding that the reinsurance transactions in question were conducted by Conn. General in pursuance of a franchise or privilege granted Conn. General by California (when in fact California granted Conn. General, at most, a franchise or privilege to conduct reinsurance business only in California [fol. 86] and not elsewhere, and this appeal concerns only business done elsewhere); and said Supreme Court of California erred in holding that Art. XIII, Sec. 14(b) of the Constitution of California required Conn. General to pay a tax on account of this alleged franchise or privilege; and further erred in holding that as so construed or applied California does not thereby take the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

6. That California had no power to grant a franchise or privilege to Conn. General to conduct reinsurance transactions wholly outside of the State of California and that no franchise or privilege which the State of California could purport to grant to Conn. General authorizing it to conduct reinsurance transactions outside of said state could authorize California to levy and collect a tax upon Conn. General measured by gross premiums received from such reinsurance transactions.

7. The Supreme Court of California erred in holding that California had power to grant a franchise or privilege to Conn. General to conduct the reinsurance transactions in question, that it had granted a franchise or privilege authorizing Conn. General to conduct said reinsurance

transactions (all of which were transactions executed and performed wholly outside of California) and that said alleged franchise or privilege empowered California to levy and collect a tax upon Conn. General measured by gross premiums received from the aforesaid reinsurance transactions; and erred in holding that Conn. General, in doing [fol. 87] the aforesaid reinsurance business outside of California, was exercising a privilege in California, and that this business was done under a franchise granted by California, and that Art. XIII, Sec. 14(b) of the Constitution of California required Conn. General to pay said tax on account of this alleged franchise or privilege; and that as so construed and applied, California does not thereby take the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

8. Art. XIII, Sec. 14(b) of the Constitution of California as construed by the Supreme Court of California requires Conn. General to pay a tax on account of business not done in California, on account of a franchise not granted by California, and on account of a privilege not exercised in California, and therefore California has taken the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

9. The Supreme Court of California erred in holding that Art. XIII, Sec. 14(b) of the Constitution of California required Conn. General to pay a tax in excess of 5.4% of the net premiums received by Conn. General on account of business done in California when other life insurance companies organized under laws other than California and similarly situated and authorized to do business in California but which did not accept reinsurance business, were required to pay a tax amounting only to 2.6% of the net premiums received on account of business done in Cali- [fol. 88] fornia; and in holding that the tax so levied on Conn. General was not arbitrary or discriminatory and in further holding that California did not thereby deny to Conn. General the equal protection of its laws in violation of the Fourteenth Amendment to the Constitution of the United States.

The assignment of errors heretofore filed by Conn. General with the Clerk of the Supreme Court of California con-

tains in full all of the points upon which Conn. General intends to rely on this appeal. Said assignment of errors is hereby expressly referred to by Conn. General and is hereby incorporated herein by reference for all purposes.

Designation of the Parts of the Record Which Conn. General Deems Necessary for the Consideration of the Foregoing Points

Pursuant to Rule 13, Paragraph 9 of the Rules of the Supreme Court of the United States, Conn. General hereby designates the parts of the record in the above entitled action which it thinks necessary for the consideration of the points above set forth:

The entire record docketed in the above entitled causes with the exception of captions, titles and verifications.

Dated August 17, 1937.

Raymond Benjamin. William Marshall Bullitt. Hartley F. Peart.

Receipt of a copy of the foregoing statement is hereby admitted this 17th day of August, 1937.

U. S. Webb, Attorney General, by Neil Cunningham, James J. Arditto, Deputy Attorney- General.

[fol. 89] [File endorsement omitted.]

Endorsed: Enter William Marshall Bullitt. File No. 41,797. California Supreme Court. Term No. 216. Connecticut General Life Insurance Company, appellant, vs. Charles G. Johnson, as Treasurer of the State of California. Filed August 14, 1937. Term No. 316, O. T., 1937.